

having assumed the chair, Mrs. EMERSON, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that the Committee, having had under consideration the bill (H.R. 2883) to amend provisions of law enacted by the Government Performance and Results Act of 1993 to improve Federal agency strategic plans and performance reports, pursuant to House Resolution 384, she reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. KUCINICH. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 242, nays 168, not voting 20, as follows:

[Roll No. 50]

YEAS—242

Aderholt	Christensen	Fowler
Archer	Coble	Fox
Army	Coburn	Franks (NJ)
Bachus	Collins	Frelinghuysen
Baesler	Combest	Gallely
Baker	Condit	Ganske
Ballenger	Cook	Gekas
Barr	Cooksey	Gibbons
Barrett (NE)	Cox	Gilchrest
Bartlett	Cramer	Gillmor
Barton	Crane	Gilman
Bass	Crapo	Goode
Bateman	Cubin	Goodlatte
Bereuter	Cunningham	Goodling
Bilbray	Danner	Graham
Bilirakis	Davis (VA)	Granger
Bliley	Deal	Green
Blunt	DeLay	Greenwood
Boehlert	Diaz-Balart	Gutknecht
Boehner	Dickey	Hall (OH)
Bonilla	Doggett	Hall (TX)
Brady	Doolittle	Hansen
Bryant	Dreier	Hastert
Burr	Duncan	Hastings (WA)
Burton	Dunn	Hayworth
Buyer	Ehlers	Hefley
Callahan	Ehrlich	Heger
Calvert	Emerson	Hill
Camp	English	Hilleary
Campbell	Ensign	Hobson
Canady	Everett	Hoekstra
Cannon	Ewing	Horn
Castle	Fawell	Hostettler
Chabot	Foley	Houghton
Chambliss	Forbes	Hulshof
Chenoweth	Fossella	Hunter

Hyde	Nethercutt	Shaw
Inglis	Neumann	Shays
Istook	Ney	Shimkus
Jenkins	Northup	Shuster
Johnson (CT)	Norwood	Sisisky
Johnson, Sam	Nussle	Skeen
Jones	Oxley	Skelton
Kasich	Packard	Smith (MI)
Kelly	Pappas	Smith (NJ)
Kim	Parker	Smith (OR)
King (NY)	Paul	Smith (TX)
Kingston	Paxon	Smith, Linda
Klug	Pease	Snowbarger
Knollenberg	Peterson (PA)	Solomon
Kolbe	Petri	Souder
LaHood	Pickering	Spence
Largent	Pickett	Stabenow
Latham	Pitts	Stearns
LaTourette	Pombo	Stenholm
Lazio	Porter	Stump
Leach	Portman	Sununu
Lewis (CA)	Pryce (OH)	Talent
Lewis (KY)	Quinn	Tauzin
Linder	Radanovich	Taylor (MS)
Livingston	Ramstad	Taylor (NC)
LoBiondo	Regula	Thomas
Lucas	Riggs	Thornberry
Luther	Riley	Thune
Maloney (CT)	Rivers	Tiahrt
Manzullo	Rogan	Traficant
McCarthy (MO)	Rogers	Upton
McCollum	Rohrabacher	Walsh
McCrery	Ros-Lehtinen	Wamp
McDade	Roukema	Watkins
McHugh	Royce	Watts (OK)
McInnis	Ryun	Weldon (FL)
McIntosh	Salmon	Weldon (PA)
McIntyre	Sanford	Weller
McKeon	Saxton	White
Metcalf	Scarborough	Whitfield
Mica	Schaefer, Dan	Wicker
Miller (FL)	Schaffer, Bob	Wolf
Moran (KS)	Sensenbrenner	Young (AK)
Morella	Sessions	Young (FL)
Myrick	Shadegg	

NAYS—168

Abercrombie	Gejdenson	Millender-
Ackerman	Gordon	McDonald
Allen	Gutierrez	Miller (CA)
Andrews	Hamilton	Minge
Baldacci	Hastings (FL)	Mink
Barcia	Hefner	Moakley
Barrett (WI)	Hilliard	Mollohan
Becerra	Hinchey	Moran (VA)
Bentsen	Holden	Murtha
Berry	Hooley	Neal
Bishop	Hoyer	Oberstar
Blagojevich	Jackson (IL)	Obey
Blumenauer	Jackson-Lee	Olver
Bonior	(TX)	Ortiz
Borski	Jefferson	Owens
Boswell	Johnson (WI)	Pallone
Boucher	Johnson, E.B.	Pascarell
Boyd	Kanjorski	Pastor
Brown (FL)	Kaptur	Payne
Brown (OH)	Kennedy (MA)	Pelosi
Cardin	Kennedy (RI)	Peterson (MN)
Carson	Kennelly	Pomeroy
Clay	Kildee	Price (NC)
Clayton	Kilpatrick	Rahall
Clement	Kind (WI)	Rangel
Clyburn	Klecza	Reyes
Conyers	Klink	Rodriguez
Costello	Kucinich	Roemer
Coyne	LaFalce	Rothman
Davis (FL)	Lampson	Roybal-Allard
Davis (IL)	Lantos	Rush
DeFazio	Levin	Sabo
DeGette	Lewis (GA)	Sanders
Delahunt	Lipinski	Sandlin
DeLauro	Lowe	Sawyer
Deutsch	Maloney (NY)	Schumer
Dicks	Manton	Scott
Dingell	Markey	Serrano
Dixon	Martinez	Sherman
Dooley	Mascara	Skaggs
Edwards	Matsui	Slaughter
Engel	McCarthy (NY)	Smith, Adam
Eshoo	McDermott	Snyder
Etheridge	McGovern	Spratt
Evans	McHale	Stark
Farr	McKinney	Stokes
Fattah	McNulty	Strickland
Fazio	Meehan	Stupak
Filner	Meek (FL)	Tauscher
Ford	Meeks (NY)	Thompson
Frank (MA)	Menendez	Thurman
Frost		Tierney

Torres	Visclosky	Weygand
Towns	Waters	Wise
Turner	Watt (NC)	Woolsey
Velazquez	Waxman	Wynn
Vento	Wexler	Yates

NOT VOTING—20

Berman	Gonzalez	Nadler
Brown (CA)	Goss	Poshard
Bunning	Harman	Redmond
Cummings	Hinojosa	Sanchez
Doyle	Hutchinson	Schiff
Furse	John	Tanner
Gephardt	Lofgren	

□ 1321

Mr. MOAKLEY and Mr. HEFNER changed their vote from "yea" to "nay."

Mr. LUTHER and Ms. RIVERS changed their vote from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

### PERSONAL EXPLANATION

Mr. CUMMINGS. Mr. Speaker, on rollcall number 50, my vote on the bill, H.R. 2883, the Government Performance Results Act amendments was not recorded, as there was a computer malfunction in the recording device. Today, I was present for all recorded votes in the House.

Had the computer accurately recorded my vote, it would have been a "no" vote on final passage.

I ask for unanimous consent that my statement appear in the RECORD immediately following that rollcall vote.

### GENERAL LEAVE

Mr. SESSIONS. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 2883, the bill just passed.

The SPEAKER pro tempore (Mrs. EMERSON). Is there objection to the request of the gentleman from Texas?

There was no objection.

### TUCKER ACT SHUFFLE RELIEF ACT OF 1997

The SPEAKER pro tempore (Mr. THOMAS). Pursuant to House Resolution 382 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 992.

□ 1323

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 992) to end the Tucker Act shuffle, with Mrs. EMERSON (Chairman pro tempore) in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. When the Committee of the Whole rose on

Wednesday, March 11, 1998, pending was the amendment by the gentleman from North Carolina (Mr. WATT).

Pursuant to the order of the House of that day, no further debate or amendment to the committee amendment in nature of a substitute shall be in order except for the pending amendment, which shall be debatable for 20 minutes.

The gentleman from North Carolina (Mr. WATT) and a Member opposed, the gentleman from Texas (Mr. SMITH) each will control 10 minutes.

The Chair recognizes the gentleman from North Carolina (Mr. WATT).

Mr. WATT of North Carolina. Madam Chairman, I yield myself 30 seconds for the benefit of explaining to the Members where we are in the process so that people will know what we are doing.

We debated this bill yesterday and had part of the debate on the Watt-Rothman amendment yesterday. We now have 10 minutes on each side to further debate the Watt-Rothman amendment. Then there will be a vote on the Watt-Rothman amendment, and then a vote on final passage, for those who are trying to schedule their time at this point.

Madam Chairman, I reserve the balance of my time.

Mr. SMITH of Texas. Madam Chairman, I yield myself such time as I may consume, and I rise in opposition to this amendment.

The issues today are about equity and fairness. Every homeowner and property owner across America deserves to have their day in court and in the court that is best for them. An individual who seeks to contest a governmental taking must deal with unreasonable obstacles and costs in negotiating their way through the legal maze of the Tucker Act. Current law denies the Court of Federal Claims authority to hear claims for injunctive relief and denies the U.S. district courts the authority to hear claims for monetary relief over \$10,000.

The Federal Government often says that property owners have sued in the wrong court, bouncing property owners back and forth between the two courts. Some argue we should end the Tucker Act shuffle by giving only U.S. district courts the ability to grant complete relief in takings cases. But why should we disregard the Court of Federal Claims' expertise or its large body of case law and deny the court the ability to hearing takings claims for both monetary and equitable relief?

Property owners have the right to be heard either in the Court of Claims or in the U.S. district court. Why not give property owners the option of going to the court that they think is best? If the property owner wants to pursue their claim in a court close to home, the property owner can choose a district court. If the owner wants to utilize the expertise of a specialized court, the owner can choose the Court of Federal Claims. We should make it as easy as

possible for property owners to have their claims heard.

There has been a concern voiced about giving an Article III court's powers to an Article I court; that it would somehow be unconstitutional. But the answer is that both courts are clearly constitutional. Furthermore, the bill directs that all appeals, whether from the U.S. district court or the Court of Federal Claims, will go to the same Court of Appeals for the Federal Circuit, an Article III court. The Constitution clearly allows Congress to provide the Court of Federal Claims with the power of providing relief in takings cases.

□ 1330

First, each Federal court, whether an Article I court or an Article III court, has the inherent authority and duty to disregard unconstitutional statutes and regulations. In *IBM vs. U.S.*, the Federal Circuit recently affirmed a ruling by the Court of Federal Claims declaring a Federal tax statute to be unconstitutional.

Second, the Court of Federal Claims already has the power to grant injunctive relief in various areas, which today total 40 percent of its current docket load. And third, the recent Supreme Court cases of *Northern Pipeline Construction Company vs. Marathon Pipeline Company*, and *Commodity Futures Trading Commission vs. Schor*, both signal Congress' ability to give the Court of Federal Claims the power to grant total relief in takings cases.

Private property owners should have the option and the opportunity to assert their constitutional rights in the court of their choice without being treated like a Ping-Pong ball. Every property owner in America has the right to obtain a timely resolution, one way or the other, of their takings claims. They deserve to have their day in court and in the right court, the court of their choice.

There are some, and I certainly do not put my friend from North Carolina in this category, but there are some who say they are for property rights. What they mean is they are for property rights in the abstract; they are for property rights theoretically; and they are for property rights idealistically. But when it comes to relevant people with real problems, and we have abundant examples of horror stories, when it comes to real people with real problems, somehow these theoretical abstract property rights supporters can never be found.

H.R. 992 is a fair, straightforward, common-sense way to get every property owner across America their right to choose the court that they think is best for their claim, either the Claims Court or the Federal District Court; and this amendment would destroy that option that every property owner in America should have. Madam Chairman, I urge my colleagues to vote against this amendment.

Madam Chairman, I reserve the balance of my time.

Mr. WATT of North Carolina. Madam Chairman, I yield 30 seconds to the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. Madam Chairman, this could be a very good bill, but only if the Watt/Rothman amendment does pass. People who have had their land taken clearly should have it resolved in one court. But that court is not the Court of Federal Claims, it is the U.S. District Court.

The Watt/Rothman amendment sends it to the U.S. District Court, accomplishes the efficiency, the fairness that people are looking for. If Watt/Rothman passes, I would strongly support this bill. But a lot of people understand that if the only court you can go to is the Court of Federal Claims, this will not be a good bill and will have to vote against it.

Mr. SMITH of Texas. Madam Chairman, I reserve the balance of my time.

Mr. WATT of North Carolina. Madam Chairman, I yield 4 minutes to the gentleman from New Jersey (Mr. Rothman).

Mr. ROTHMAN. Madam Chairman, I rise today in strong support of the Watt/Rothman amendment to H.R. 992. I want to begin by saying thank you and congratulations to my colleague, the gentleman from Texas (Mr. SMITH), for identifying this problem that has caused private property owners so much heartache and expense.

I do want to say also, though, with respect to my colleague from Texas, that the solution that he offers, in my judgment, is unconstitutional. The problem here we are talking about arises in Federal cases involving the taking of land without just compensation. The question is how do we solve the problem? Do we solve the problem in what might arguably be an unconstitutional way?

There are laypeople and experts who say that this solution, H.R. 992, is unconstitutional. Or do we solve the problem in an elegant, simple, and completely effective way that happens to be perfectly constitutional?

Last October, along with many of my colleagues from both parties, I voted in favor of H.R. 1534, the Private Property Rights Implementation Act. I did so proudly. H.R. 1534 was important because it cut years of delay from Federal takings proceedings that kept people from having their day in court.

However, notwithstanding H.R. 1534, there still remains an unjustifiable shuffle within the Federal court system that people must go through in order to get their Federal takings claims resolved. These property owners are being shuffled between the U.S. District Court and the Court of Federal Claims when they bring suit against the Federal Government after their property has been taken without just compensation.

But the problem with H.R. 992, with respect, is that the solution to this shuffling problem gives broad powers that are normally reserved for the judicial branch courts, Article III courts,

and instead gives them to the Court of Federal Claims, an Article I court, whose judges happen to be appointed for a period of years as opposed to the lifetime appointments of the Federal District Court judges.

As you might imagine, these lifetime points of the Federal District Court judges allow the judges to have a much more impartial attitude regarding all cases, especially keeping them from the kind of political pressure that we all feel is inappropriate in Federal cases.

For those Members who want to get rid of the shuffle that private property owners seeking relief are now being required to go through, there is a perfectly complete and constitutional solution to that problem. That is the Watt/Rothman amendment to H.R. 992.

Our amendment is very simple. It says, if one is concerned about getting shuffled around the Federal court system in order to get their private property rights heard, their claims heard, they would now, under the Watt/Rothman amendment, be able to challenge the validity of the Federal statute authorizing the taking, have all other related claims heard, and receive compensation as well as any and all other remedies entirely with the one court, the Federal District Court. There would be no shuffling. The problem would be solved completely, elegantly, efficiently, and without any question, constitutionally.

So the question is, why do it any other way; why do it in a manner that is subject to constitutional attack? If we are really all about giving private property owners who have claims a clear and immediate chance to avoid the shuffling between courts, why would we vote for a bill, H.R. 992, that raises constitutional questions, is almost certainly to be challenged in court, and be defeated in court as unconstitutional, when there is available the Watt/Rothman amendment that is perfectly constitutional and eliminates the shuffling problem?

That is why I urge all my colleagues, if they really care about private property rights claims to help homeowners, to help business people and others who are making private property claims in Federal court, vote for the Watt/Rothman amendment. It is constitutional and it works.

Mr. SMITH of Texas. Madam Chairman, I yield myself 30 seconds.

Madam Chairman, let me respond very briefly to my friend from New Jersey and say that the constitutional problems that he raised are just in the eyes of the beholder, just himself and a few others. They are certainly not in the eyes of judges or other courts who have ruled on this issue.

I mentioned a while ago one case, the IBM versus United States case, where the Federal circuit recently affirmed a ruling by the Court of Federal Claims declaring a Federal tax statute to be unconstitutional. Clearly, the court is saying that the Court of Claims can so rule.

I have also mentioned the Northern Pipeline Construction Company, which is a recent Supreme Court case, as well as the Commodity Futures Trading Commission case, which was also a recent Supreme Court case.

Both of those cases put up tests that could be met by the Court of Claims, and any ruling that it would make in regard to the Fifth Amendment taking claims would clearly be constitutional.

If the plain language of the Supreme Court cases is not clear to my friends, I am happy for the judges to stand corrected, but that is a constitutional court, the Court of Claims.

Madam Chairman, I reserve the balance of my time.

Mr. WATT of North Carolina. Madam Chairman, might I inquire how much time remains on each side?

The CHAIRMAN pro tempore. The gentleman from Texas (Mr. SMITH) has 5 minutes remaining, and the gentleman from North Carolina (Mr. WATT) has 5 minutes remaining.

Mr. WATT of North Carolina. Madam Chairman, I yield myself as much time as I may consume.

Madam Chairman, let me first say to my colleagues what this dispute is not about. First of all, both sides of the aisle, the gentleman from Texas (Mr. SMITH) and I agree that shuffling private citizens back and forth between two courts is not acceptable.

I understand the historical reason that it was done. In fact, it was done because the Court of Federal Claims could have jurisdiction over the claims part of an issue, but they did not have the constitutional authority to declare statutes unconstitutional.

So the reason that we have this two-party arrangement now, where the Court of Federal Claims has part of the jurisdiction and the U.S. District Court has part of the jurisdiction, is for the very constitutional reason that I am offering this amendment. But both of us agree that that should be eliminated.

This is not about taking jurisdiction away from the U.S. Court of Federal Claims. I would love for them to have jurisdiction over this matter. If they had the constitutional authority to deal with it, it would not matter to me who had jurisdiction over the issue.

So why are we here? We are trying to find a solution which is a constitutional solution. Why is that important? Go back to the founding of our country when our Constitution was first written. The Founding Fathers wrote this: That King George has made judges dependent on his will alone for the tenure of their offices and the amount of payment of their salaries.

That was unacceptable to the Founding Fathers. That is why they set up an independent judiciary in our country, so that we would not have to address that issue.

They set up some other courts, like the Court of Federal Claims. Yes, it is a good court. No problem with the court. But they did not give the judges

over there lifetime tenure and guaranteed salaries that separates them out and gives them independence on these issues. They just do not have that authority.

So we are trying to find a place that we can send private property takings and all of the issues related to those private property takings where they can get a constitutional hearing in one location. The only place to do that is the United States District Court, because it is an Article III court set up under the Constitution for that kind of purpose.

It makes you wonder why my colleagues on the other side might be favoring giving this responsibility to the Court of Federal Claims. There are two theories I have. Either they want the issue more than they want a solution; that is one possibility. The other possibility is that all 14 judges on the Court of Federal Claims are Reagan/Bush appointees. And 11 out of the 13 appeals judges are Reagan/Bush appointees. So all of a sudden, this becomes a political issue rather than a problem to be solved, which is what we should be about in this body.

The President has said, the administration has said that they are going to recommend aggressively that this bill be vetoed if it is passed in an unconstitutional form such as the one now. They have said we will sign this bill if the Watt/Rothman amendment is passed.

Environmental groups, others who have opposed this bill have said, we encourage people to vote for the bill if the Watt/Rothman amendment is passed. It will solve the problem. It will repose the responsibility in a constitutional court.

That is what we thought we were striving to do, to solve the problem. But there are some people in this body who would rather have the issue to complain about and raise it at that level than they would to solve the problem.

I ask my colleagues to support this amendment, make this bill vetoproof. Let us get it passed. Let us solve the problem and quit worrying about where the issue is.

Mr. SMITH of Texas. Madam Chairman, I yield myself 15 seconds.

Madam Chairman, I just simply want to urge my opponents to read the Supreme Court cases that I mentioned a minute ago. If they did, I am sure they would understand why this bill is absolutely constitutional.

Madam Chairman, I yield 1 minute to my friend, the gentleman from Ohio (Mr. CHABOT).

□ 1345

Mr. CHABOT. Madam Chairman, I rise to oppose this amendment.

The main purpose of this legislation is to give those who feel that their property has been taken by an action of the Federal Government the ability to file a single suit in a single Federal court of their choice, either the court

of claims or the Federal district court. This amendment would take that choice away and force them to file in a district court, requiring them to forgo the expertise of the court of claims.

Under current law, when a person believes that they have suffered a taking by the Federal Government, they face an unfair decision that makes them choose between compensation and putting a stop to the action. Although this amendment represents a step in the right direction when compared to the current law, it should be rejected in favor of the broader step taken in the underlying legislation.

Finally, Madam Chairman, I would like to thank the gentleman from Texas (Mr. SMITH) for his perseverance in pushing this legislation to help those who are already burdened by uncompensated takings to get their day in court. I am proud to have cosponsored this important legislation.

Mr. SMITH of Texas. Madam Chairman, I yield myself the balance of my time.

Once again, I want to say to my colleagues and reassure them that H.R. 992 is a fair, straightforward, common-sense way to give every property owner across America their right to choose the court that they think is best for their claim, either the claims court or the Federal district court. This amendment again would destroy that option.

If we support giving private property owners their day in court, if we believe property owners, not the Federal Government, should choose the court that hears their case, if we believe that property owners do not deserve to be treated like a ping-pong ball and shuffled back and forth between courts, if we believe in fairness and equity, then I encourage my colleagues on both sides of the aisle to vote for this fair, straightforward, common-sense bill and support the right of every property owner across America to have their day in court and in the court that is best for them.

Madam Chairman, I have made a good-faith effort over the last 2 days to address the concerns of my colleagues that we not affect in any way environmental laws. With the adoption of the amendment that I offered last night during our debate, this bill does not affect those laws or preempt them in any way. I urge my colleagues who had concerns to vote for H.R. 992 with my amendment to protect environmental laws and to vote no on the administration's amendment offered by the gentleman from North Carolina (Mr. WATT).

Among many organizations, the Chamber of Commerce, the realtors and the homebuilders support this legislation and oppose this amendment. I urge a strong bipartisan vote in opposition to this amendment and in favor of the underlying bill.

Madam Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore (Mrs. EMERSON). The question is on the

amendment in the nature of a substitute offered by the gentleman from North Carolina (Mr. WATT).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

#### RECORDED VOTE

Mr. WATT of North Carolina. Madam Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 206, noes 206, not voting 19, as follows:

[Roll No. 51]

#### AYES—206

Abercrombie	Hamilton	Oberstar
Ackerman	Hastings (FL)	Obey
Allen	Hefner	Oliver
Andrews	Hilliard	Ortiz
Baessler	Hinchey	Owens
Baldacci	Hinojosa	Pallone
Barrett (WI)	Holden	Pappas
Bass	Hooley	Pascarella
Becerra	Horn	Pastor
Bentsen	Hoyer	Payne
Bilbray	Jackson (IL)	Pelosi
Bishop	Jackson-Lee	Pomeroy
Blagojevich	(TX)	Porter
Blumenauer	Jefferson	Price (NC)
Boehert	Johnson (CT)	Rahall
Bonior	Johnson (WI)	Ramstad
Borski	Johnson, E. B.	Reyes
Boucher	Kanjorski	Rivers
Boyd	Kaptur	Rodriguez
Brown (FL)	Kelly	Ros-Lehtinen
Brown (OH)	Kennedy (MA)	Rothman
Campbell	Kennedy (RI)	Roukema
Cardin	Kennelly	Roybal-Allard
Carson	Kildee	Rush
Castle	Kilpatrick	Sabo
Clay	Kind (WI)	Sanders
Clayton	Kleccka	Sandlin
Clyburn	Klink	Sanford
Conyers	Klug	Sawyer
Coyne	Kolbe	Saxton
Cummings	Kucinich	Schumer
Davis (FL)	LaFalce	Scott
Davis (IL)	LaHood	Serrano
DeFazio	Lampson	Shays
DeGette	Lantos	Sherman
Delahunt	Leach	Skaggs
DeLauro	Levin	Skelton
Deutsch	Lewis (GA)	Slaughter
Diaz-Balart	LoBiondo	Smith (NJ)
Dicks	Lowe	Smith, Adam
Dingell	Luther	Snyder
Dixon	Maloney (CT)	Spratt
Doggett	Maloney (NY)	Stabenow
Dooley	Manton	Stark
Doyle	Markey	Stokes
Ehlers	Martinez	Strickland
Engel	Mascara	Stupak
Eshoo	McCarthy (MO)	Tauscher
Etheridge	McCarthy (NY)	Thompson
Evans	McDermott	Thurman
Ewing	McGovern	Tierney
Farr	McHale	Torres
Fattah	McIntyre	Towns
Fawell	McKinney	Upton
Fazio	McNulty	Velazquez
Filner	Meehan	Vento
Forbes	Meek (FL)	Visclosky
Ford	Meeks (NY)	Walsh
Fox	Menendez	Walters
Frank (MA)	Millender-McDonald	Watt (NC)
Frelinghuysen	Miller (CA)	Waxman
Frost	Minge	Weldon (PA)
Gejdenson	Mink	Wexler
Gilchrest	Moakley	Weygand
Gilman	Mollohan	Wise
Gordon	Moran (VA)	Woolsey
Green	Morella	Wynn
Greenwood	Murtha	Yates
Gutierrez	Neal	
Hall (OH)		

#### NOES—206

Aderholt	Barr	Bilirakis
Archer	Barrett (NE)	Bliley
Armey	Bartlett	Blunt
Bachus	Barton	Boehner
Baker	Bateman	Bonilla
Ballenger	Bereuter	Boswell
Barcia	Berry	Brady

Bryant	Hayworth	Pickering
Burr	Hefley	Pickett
Burton	Herger	Pitts
Buyer	Hill	Pombo
Callahan	Hilleary	Portman
Calvert	Hobson	Pryce (OH)
Camp	Hoekstra	Quinn
Canady	Hostettler	Radanovich
Cannon	Houghton	Regula
Chabot	Hulshof	Riggs
Chambliss	Hunter	Riley
Chenoweth	Hutchinson	Roemer
Christensen	Hyde	Rogan
Clement	Inglis	Rogers
Coble	Istook	Rohrabacher
Coburn	Jenkins	Royce
Collins	Johnson, Sam	Ryun
Combest	Jones	Salmon
Condit	Kasich	Scarborough
Cook	Kim	Schaffer, Bob
Cooksey	King (NY)	Sensenbrenner
Costello	Kingston	Sessions
Cox	Knollenberg	Shadegg
Cramer	Largent	Shaw
Crane	Latham	Shimkus
Crapo	LaTourette	Shuster
Cubin	Lazio	Sisisky
Cunningham	Lewis (CA)	Skeen
Danner	Lewis (KY)	Smith (MI)
Davis (VA)	Linder	Smith (OR)
Deal	Lipinski	Smith (TX)
DeLay	Livingston	Smith, Linda
Dickey	Lucas	Snowbarger
Doolittle	Manzullo	Solomon
Dreier	Matsui	Souder
Duncan	McCollum	Spence
Dunn	McCrery	Stearns
Edwards	McDade	Stenholm
Ehrlich	McHugh	Stump
Emerson	McInnis	Sununu
English	McIntosh	Talent
Ensign	McKeon	Tauzin
Everett	Metcalfe	Taylor (MS)
Foley	Mica	Taylor (NC)
Fossella	Miller (FL)	Thomas
Fowler	Moran (KS)	Thornberry
Franks (NJ)	Myrick	Thune
Gallely	Nethercutt	Tiahrt
Ganske	Neumann	Trafficant
Gekas	Ney	Turner
Gibbons	Northup	Wamp
Gillmor	Norwood	Watkins
Gingrich	Nussle	Watts (OK)
Goode	Oxley	Weldon (FL)
Goodlatte	Packard	Weller
Goodling	Parker	White
Graham	Paul	Whitfield
Granger	Paxon	Wicker
Gutknecht	Pease	Wolf
Hall (TX)	Peterson (MN)	Young (AK)
Hansen	Peterson (PA)	Young (FL)
Hastings (WA)	Petri	

#### NOT VOTING—19

Berman	Harman	Redmond
Brown (CA)	Hastert	Sanchez
Bunning	John	Schaefer, Dan
Furse	Lofgren	Schiff
Gephardt	Nadler	Tanner
Gonzalez	Poshards	
Goss	Rangel	

#### □ 1411

Messrs. TAYLOR of Mississippi, WHITE, and LIVINGSTON, and Ms. DANNER changed their vote from "aye" to "no."

Messrs. ORTIZ, FROST and JEFFERSON changed their vote from "no" to "aye."

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN pro tempore (Mrs. EMERSON). The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

Mr. NETHERCUTT. Mr. Chairman, I rise today in support of H.R. 992, the Tucker Act

Shuffle Relief Act, introduced by my colleague from Texas, Mr. SMITH.

The Tucker Act Shuffle Relief Act would bring clarity to the legal process for landowners who make property rights claims under the Fifth Amendment to the Constitution. As we all know, the Fifth Amendment requires that no person be deprived of property without the due process of law, nor shall private property be taken for public use without just compensation.

As I have listened to the debate, I do not believe there is disagreement over the need for just or fair compensation. However, there is disagreement over the best way to ensure the rights of private property owners are protected.

Mr. Speaker, I believe the Tucker Act is needed because of the procedural nightmares many private property owners face when seeking judicial relief from any outright taking of land or its restriction of use by a federal agency or regulation. Under current law, a claim must be made in two separate federal courts, U.S. Court of Federal Claims (CFC) and a federal district court. The CFC will hear the money claims against the U.S. government while district courts will address the legality of the federal action. This jurisdictional split has been called by many the "Tucker Act Shuffle."

Mr. Speaker, H.R. 992 is not anti-environment, nor will it amend any environmental law, as many of my colleagues have said. H.R. 992 would simply allow private property owners to seek redress in only one court, either the CFC or a federal district court. I believe that streamlining the legal process will greatly reduce the length of time and cost of litigation, which is both good for the private property owner and the federal government.

I thank my colleague from Texas for introducing his bill at this time, and ask my colleagues to support H.R. 992.

Mr. BLUMENAUER. Mr. Chairman, late last year we passed legislation that was an important landmark in the debate over the resolution of private property rights disputes.

In far too many parts of the country we have a patchwork system for resolving land use disputes that relies almost entirely upon legal maneuvering and political pressure. In many cases, this is because these areas lack comprehensive land use plans developed by local government with the help of their citizens and business interests.

This is an exceedingly inefficient and often unfair way to resolve the important public policy decisions attendant to development. There needs to be a way to provide incentives to State and local governments to carefully codify their planning objectives in terms of zoning and development requirements, along with cost and fee structures that require development to pay its own way. A combination of sound land use planning and appropriate user fee structures makes good development possible.

The legislation before us today is, in part, a logical addition to the steps we took in passing H.R. 1535. Members on both sides of the aisle see the wisdom of allowing both the claim suit and the compensation suit to be heard in one court opposed to two.

But unfortunately, in attempting to fix this problem, H.R. 992 creates a new one which is, for me, decisive. H.R. 992 would severely weaken a critical component of our environ-

mental and labor laws, the so-called preclusive review. Under the bill, suits regarding the proper use of land or water as those uses related to the Clean Water Act and other critical environmental statutes could be heard in any of the district courts, as well as the Court of Federal Claims. Such a proposal opens the door to the possibility of courts establishing different water or air standards for different parts of the country. Without a uniform standard, as currently protected by preclusive review, we undermine the entire purpose of our environmental status. I don't believe a provision of this sort belongs in a bill specifically oriented toward eliminating the burden of separate court filings for takings claims. By supporting the Watt amendment, we can eliminate the Tucker Act Shuffle without undermining our environmental statutes.

Ms. PELOSI. Mr. Chairman, I rise in support of the amendment to H.R. 992 offered by Representatives WATT and ROTHMAN.

H.R. 992 would weaken existing environmental laws and increase the number of court cases initiated to challenge longstanding environmental protections. It would leave to the courts the interpretation of environmental laws by expanding court jurisdiction and authority to challenge government regulations.

As the bill stands, it would allow developers to shop the courts until they located the most favorable venue for the most favorable treatment of their arguments and to be heard in either the U.S. District Court or the U.S. Court of Federal Claims. One court might rule in one way affecting the same law that another court might act on with an entirely different interpretation. Contradictory rulings would lead to widespread confusion of the intent of laws developed and approved by Congress. The Watt-Rothman amendment offers a more reasonable approach to the court shopping spree provided under the bill.

Under Article I of the Constitution, the Court of Federal Claims does not have the authority to revoke federal statutes or to provide relief other than monetary. The Watt-Rothman amendment addresses the question of constitutionality and effectively eliminates the current "shuffle" between courts by consolidating claims within a single court, the U.S. District Court. The Watt-Rothman amendment also preserves expedited review which is important to determine the validity of federal regulations in an expeditious manner.

I urge my colleagues to vote in favor of the Watt-Rothman amendment.

Mr. YOUNG of Alaska. Mr. Chairman, I rise in support of H.R. 992, the Tucker Act Shuffle Relief Act. This bill would simplify the court procedures when a case is brought by a private property owner to protect their legal and civil rights as guaranteed in the 5th amendment of the United States Constitution. This is a bill that is sorely needed.

As chairman of the Committee on Resources, we have documented in our hearings the many cases where governments assert the right to set aside private lands for the protection of wildlife.

When a landowner wants to sell land and the government pays for the land, that is legal and an acceptable manner for the government to protect wildlife.

However, as is happening more frequently, the government sometimes finds it inconvenient to find the funds to buy the land, so they designate it as habitat for an endangered species.

When that happens, landowners find that they cannot use their land. In the last two years, under extreme pressure from the Republican Congress, the government is beginning a process to allow landowners to use land designated as habitat, but only at a very high cost to landowners.

When landowners cannot afford to go to court to protect their legal and civil rights, the government can use pressure to take the land from the landowner.

We need to give landowners a more level playing field. We need to insure that going to court is not so expensive that only the biggest and richest landowners can afford to protect their rights.

A case in point is the Headwaters Forest in California. For years the government tried to use various forestry laws and the ESA to force the landowner off a portion of its land.

The landowner filed a takings suit in the court of claims and now the government has come to the bargaining table and offering to pay for the property.

This would not have happened if this landowner had not been a large, wealthy corporation with the resources to fight a long and an expensive court battle.

Now some environmentalists are arguing that this bill would increase the number of Federal lawsuits.

Some environmentalists are now in the business of filing lawsuits. In the last ten years, environmentalists have received over ten million dollars in payments from the Federal Treasury for filing Endangered Species Act lawsuits.

I believe many of these lawsuits are frivolous and an abuse of the courts, and their numbers are increasing dramatically.

For environmentalists to argue against allowing average citizens to sue at the same time they are making a living off their lawsuits in hypocrisy of the highest order.

I have a list of environmentalists who have received payments for lawsuits and would ask that it be entered into the RECORD with my testimony.

Let's insure that the smallest and poorest landowner can have the same rights as the biggest corporation or well financed environmental groups.

Lets pass H.R. 992 and protect our constitutional rights.

The CHAIRMAN pro tempore. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. TIAHRT) having assumed the chair, Mrs. EMERSON, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 992) to end the Tucker Act shuffle, pursuant to House Resolution 382, she reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on the amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

□ 1415

The SPEAKER pro tempore (Mr. TIAHRT). The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

#### RECORDED VOTE

Mr. WATT of North Carolina. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 230, noes 180, not voting 20, as follows:

[Roll No. 52]

#### AYES—230

Aderholt	Ehrlich	Martinez
Archer	Emerson	Mascara
Armey	English	McCollum
Bachus	Ensign	McCrery
Baesler	Everett	McDade
Baker	Ewing	McHugh
Ballenger	Fazio	McInnis
Barcia	Foley	McIntosh
Barr	Ford	McIntyre
Barrett (NE)	Fossella	McKeon
Bartlett	Fowler	Metcalfe
Barton	Frost	Mica
Bateman	Gallegly	Minge
Bereuter	Ganske	Moran (KS)
Berry	Gekas	Myrick
Billirakis	Gibbons	Nethercutt
Bishop	Gillmor	Neumann
Blagojevich	Goode	Ney
Bliley	Goodlatte	Northup
Blunt	Goodling	Norwood
Boehner	Gordon	Nussle
Bonilla	Graham	Ortiz
Boswell	Granger	Oxley
Boyd	Green	Packard
Brady	Gutknecht	Paul
Bryant	Hall (OH)	Paxon
Bunning	Hall (TX)	Pease
Burr	Hansen	Peterson (MN)
Burton	Hastert	Peterson (PA)
Buyer	Hastings (WA)	Petri
Callahan	Hayworth	Pickering
Calvert	Hefley	Pickett
Camp	Hergert	Pitts
Campbell	Hill	Pombo
Canady	Hilleary	Pryce (OH)
Cannon	Hinojosa	Radanovich
Chabot	Hobson	Reyes
Chambliss	Hoekstra	Riggs
Chenoweth	Holden	Riley
Christensen	Horn	Roemer
Clement	Hostettler	Rogan
Coble	Houghton	Rogers
Coburn	Hulshof	Rohrabacher
Collins	Hunter	Ros-Lehtinen
Combest	Hutchinson	Royce
Condit	Hyde	Ryun
Cook	Inglis	Salmon
Cooksey	Istook	Sandlin
Costello	Jenkins	Scarborough
Cox	Johnson, Sam	Schaefer, Dan
Cramer	Jones	Schaffer, Bob
Crane	Kasich	Sensenbrenner
Crapo	Kim	Sessions
Cubin	Kind (WI)	Shadegg
Danner	King (NY)	Shaw
Davis (FL)	Kingston	Shimkus
Davis (VA)	Knollenberg	Shuster
Deal	Kolbe	Sisisky
DeLay	LaHood	Skeen
Diaz-Balart	Largent	Skelton
Dickey	Latham	Smith (MI)
Dooley	Lewis (CA)	Smith (OR)
Doolittle	Lewis (KY)	Smith (TX)
Doyle	Linder	Smith, Linda
Dreier	Lipinski	Snowbarger
Duncan	Livingston	Solomon
Dunn	Lucas	Souder
Edwards	Manzullo	Spence

Stearns  
Stenholm  
Stump  
Sununu  
Talent  
Tauzin  
Taylor (MS)  
Taylor (NC)  
Thomas

Thornberry  
Thune  
Thurman  
Tiahrt  
Traficant  
Turner  
Wamp  
Watkins  
Watts (OK)

Weldon (FL)  
Weygand  
White  
Whitfield  
Wicker  
Wolf  
Young (AK)  
Young (FL)

#### NOES—180

Abercrombie  
Ackerman  
Allen  
Andrews  
Baldacci  
Barrett (WI)  
Bass  
Becerra  
Bentsen  
Bilbray  
Blumenauer  
Boehlert  
Bonior  
Borski  
Boucher  
Brown (FL)  
Brown (OH)  
Cardin  
Carson  
Castle  
Clay  
Clayton  
Clyburn  
Conyers  
Coyne  
Cummings  
Davis (IL)  
DeFazio  
DeGette  
Delahunt  
DeLauro  
Deutsch  
Dicks  
Dingell  
Dixon  
Doggett  
Ehlers  
Engel  
Eshoo  
Etheridge  
Evans  
Farr  
Fattah  
Fawell  
Filner  
Forbes  
Fox  
Frank (MA)  
Franks (NJ)  
Frelinghuysen  
Gejdenson  
Gephardt  
Gilchrest  
Gilman  
Greenwood  
Gutierrez  
Hamilton  
Hastings (FL)  
Hefner  
Hilliard  
Hinchey

Hooley  
Hoyer  
Jackson (IL)  
Jackson-Lee (TX)  
Jefferson  
Johnson (CT)  
Johnson (WI)  
Johnson, E. B.  
Kanjorski  
Kaptur  
Kelly  
Kennedy (MA)  
Kennedy (RI)  
Kennelly  
Kildee  
Kilpatrick  
Klecza  
Klink  
Klug  
Kucinich  
LaFalce  
Lampson  
Lantos  
LaTourette  
Lazio  
Leach  
Levin  
Lewis (GA)  
LoBiondo  
Lowey  
Luther  
Maloney (CT)  
Maloney (NY)  
Manton  
Matsui  
McCarthy (MO)  
McCarthy (NY)  
McDermott  
McGovern  
McHale  
McKinney  
McNulty  
Meehan  
Meek (FL)  
Meeks (NY)  
Menendez  
Miller (CA)  
Miller (FL)  
Mink  
Moakley  
Mollohan  
Moran (VA)  
Morella  
Murtha  
Neal  
Oberstar  
Obey  
Oliver

Owens  
Pallone  
Pappas  
Pascarell  
Pastor  
Payne  
Pelosi  
Pomeroy  
Porter  
Portman  
Price (NC)  
Quinn  
Rahall  
Ramstad  
Rangel  
Regula  
Rivers  
Rodriguez  
Rothman  
Roukema  
Rush  
Sabo  
Sanders  
Sanford  
Sawyer  
Saxton  
Schumer  
Scott  
Serrano  
Shays  
Sherman  
Skaggs  
Slaughter  
Smith (NJ)  
Smith, Adam  
Snyder  
Spratt  
Stabenow  
Stark  
Stokes  
Strickland  
Stupak  
Tauscher  
Thompson  
Tierney  
Towns  
Upton  
Velazquez  
Vento  
Visclosky  
Walsh  
Waters  
Watt (NC)  
Waxman  
Weldon (PA)  
Wexler  
Wise  
Woolsey  
Wynn  
Yates

Had I been present, I would have voted "yes" on: 50 & 52 and "no" on: 51.

#### GENERAL LEAVE

Mr. SMITH of Texas. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore (Mrs. EMERSON). Is there objection to the request of the gentleman from Texas?

There was no objection.

#### REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 1415

Mr. SALMON. Madam Speaker, I request unanimous consent that my name be removed as a cosponsor of H.R. 1415.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

#### LEGISLATIVE PROGRAM

(Mr. FAZIO of California asked and was given permission to address the House for 1 minute.)

Mr. FAZIO of California. Madam Speaker, I yield to the gentleman from Texas (Mr. ARMEY) for an explanation of the schedule for next week.

Mr. ARMEY. Madam Speaker, I am happy to announce that we have concluded the legislative business of the week. The House will next meet on Tuesday, March 17, at 12:30 p.m. for morning hour and at 2:00 p.m. for legislative business.

We will consider a number of bills under suspension of the rules, a list of which will be distributed to Members' offices. Any recorded votes on these suspensions will be postponed until 5:00 p.m. on Tuesday, March 17.

On Tuesday, March 17, the House will also swear in Mrs. Capps as the new Member from California. On Wednesday, March 18, and Thursday, March 19, the House will meet at 10:00 a.m. to consider the following legislation: H. Con. Res. 227, a resolution directing the President to remove U.S. armed forces from Bosnia-Herzegovina; H.R. 1757, the State Department conference report; H.R. 2870, the tropical forest conservation act; and H.R. 1704, a bill to establish a congressional office of regulatory analysis.

Mr. Speaker, we hope to conclude legislative business for the week by 6:00 p.m. on Thursday, March 19. There will be no legislative business and no votes on Friday, March 20.

I want to thank the gentleman for yielding to me.

Mr. FAZIO of California. Madam Speaker, if I could ask the gentleman to tell us whether the Capps swearing in would be at 5:00 or thereafter?

Mr. ARMEY. Madam Speaker, I thank the gentleman for asking. Obviously, this is a very important day in

#### NOT VOTING—20

Berman	John	Roybal-Allard
Brown (CA)	Lofgren	Sanchez
Cunningham	Markley	Schiff
Furse	Nadler	Tanner
Gonzalez	Parker	Torres
Goss	Poshard	Weller
Harman	Redmond	

□ 1436

So the bill was passed.

The result of vote was announced as above recorded.

The title of the bill was amended so as to read: "A bill to end the Tucker Act shuffle, and for other purposes."

A motion to reconsider was laid on the table.

#### PERSONAL EXPLANATION

Mr. GOSS. Mr. Speaker, I was not present for the following rollcall votes: 50, 51, & 52.